Manoharan a/l Dorasamy v Ketua Polis Ibu Pejabat Kontinjen Polis Seremban, Negeri Sembilan & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO N–01–302 OF 1996
SHAIK DAUD, MOKHTAR SIDIN AND MOHD SAARI JJCA
29 NOVEMBER 2001

Criminal Procedure *— Disposal of property — Release of seized property — Motor car seized and detained by police for more than 48 hours — Police did not produce vehicle before magistrate under s 413 of Criminal Procedure Code for necessary order to be made — Whether detention of vehicle valid and legal — Police Act 1967 s 24*

The appellant was the registered owner of a Honda Accord 2.0 EX(i) car bearing registration number NAJ 1912 ('the vehicle'). The vehicle originated in Sabah and based on the vehicle's registration book, the appellant was the fourth registered owner after the vehicle was brought into West Malaysia. On 28 April 1994, the police seized the vehicle from the appellant and kept the same at the Petaling Jaya police station for purposes of investigation. The chemist who had examined the vehicle confirmed that the vehicle's engine and chassis numbers had been tampered with. However, the police were unable to determine who the original owner was or whether the vehicle had been stolen. Despite that the police continued to detain the vehicle until 23 January 1995 when the vehicle was released to the appellant under a bond. Thereafter, the appellant took out an originating summons to seek, inter alia, a declaration that he was the beneficial owner of the vehicle. The appellant's application was dismissed by the learned judge who heard the matter. Hence, the appealed filed the instant appeal.

Held, allowing the appeal:

(1) The vehicle had been detained by the police for more than 48 hours after it was seized. After the expiry of the 48 hour period, the police did nothing to legalize the detention under s 413 of the Criminal Procedure Code ('the CPC') because they did not produce the vehicle before the magistrate for the necessary order to be made. Therefore, the continued detention of the vehicle after 48 hours was illegal under the Police Act 1967. Accordingly, the learned judge had erred when he found the continued detention of the vehicle to be valid and legal (see p 93F–G).

(2) The learned judge erred in when he dismissed the appellant's claim and held that the appellant had an alternative remedy under s 413 of the CPC. Section 413 of the CPC empowered the police to continue detaining a vehicle after the expiry of the 48 hour period if no person had been charged in respect of that vehicle. That provision did not give any right to any individual, including

the undisputed owner, to move the magistrate to grant him possession of the vehicle. The most that the individual could do was to request the police to refer the matter to the magistrate under s 413 of the CPC for the necessary order to be made. In the instant case, the appellant did precisely that when his solicitors wrote a letter to the police to refer the matter to the magistrate under s 413 of the CPC. Despite the appellant's request, the police failed to refer the matter to the magistrate and continued to detain the vehicle. The only remedy available to the appellant was to prefer a civil claim, claiming the vehicle to be his and this was what the appellant had done (see p 94A–D).

(3) The power given to the Director General or a Director under s 12(1) of the Road Transport Act 1987 ('the RTA') was only to correct the particulars in the registration book pertaining to the vehicle and not the determination of the ownership of the vehicle. Although there was suspicion on the genuineness of the particulars stated in the registration book due to the tampering of the engine and the chassis numbers, there was no request made by the Director General or the Director for the registration book to be produced in order for the same to be amended or corrected (see p 94E–F).

(4) No evidence had been adduced by the respondent that the appellant had in any way assisted or aided the three prior registered owners of the vehicle in the registration of their names. Thus, the appellant was truly an innocent bona fide purchaser (see pp 94I–95A).

(5) Under the RTA, the vehicle had to be brought in for inspection before the name of the new owner could be registered in the registration book. Although the vehicle had been brought in three times by the Road Transport Department ('RTD') by its three previous owners for purposes of registration, the RTD had failed to discover or determine that the engine and chassis numbers of the vehicle had been tampered with. Therefore, the appellant could not be blamed for the tampering (see p 95A–B).

(6) The appellant's evidence that he had suffered damages as a result of the unlawful detention of the vehicle was not contradicted. Since the appellant had not quantified the damages and had requested that the damages be assessed, the damages would accordingly be assessed by the Senior Assistant Registrar of the High Court, Seremban (see p 95E–F).

[Bahasa Malaysia summary

Perayu adalah tuan punya sebuah kereta Honda Accord 2.0 EX(i) yang mempunyai nombor pendaftaran NAJ 1912 ('kenderaan tersebut'). Kenderaan tersebut berasal dari Sabah dan berdasarkan buku pendaftaran kenderaan tersebut, perayu adalah tuan punya

berdaftar yang keempat selepas kenderaan tersebut dibawa masuk ke Malaysia Barat. Pada 28 April 1994, polis telah merampas kenderaan tersebut daripada perayu dan menyimpannya di balas polis Petaling Jaya bagi tujuan penyiasatan. Ahli kimia yang telah memeriksa kenderaan tersebut telah mengesahkan bahawa enjin dan nombor casis kenderaan tersebut telah dikacau-ganggu. Walau bagaimanapun, pihak polis tidak dapat menentukan siapakah tuan punya asal atau sama ada kenderaan tersebut telah dicuri. Meskipun demikian polis telah terus menahan kenderaan tersebut sehingga 23 Januari 1995 bila mana kenderaan tersebut telah dilepaskan kepada perayu di bawah satu bon. Selepas itu, perayu telah mengeluarkan saman pemula untuk mendapatkan, antara lainnya, satu pengisytiharan bahawa beliau adalah tuan punya benefisial kenderaan tersebut. Permohonan perayu telah ditolak oleh hakim yang arif yang mendengar perkara tersebut. Oleh yang demikian perayu telah memfailkan rayuan ini.

Diputuskan, membenarkan rayuan tersebut:

(1) Kenderaan tersebut telah ditahan oleh polis selama lebih daripada 48 jam selepas ia dirampas. Selepas luputnya tempoh selama 48 jam, pihak polis tidak melakukan apa-apa untuk menjadikan penahanan tersebut sah di bawah s 413 Kanun Acara Jenayah ('KAJ') kerana mereka telah tidak mengemukakan kenderaan tersebut di hadapan majistret supaya perintah yang perlu dibuat. Oleh itu, penahanan berterusan kenderaan tersebut selepas 48 jam adalah tidak sah di bawah Akta Polis 1967. Sehubungan itu, hakim yang arif telah terkhilaf apabila beliau memutuskan penahanan berterusan kenderaan tersebut sebagai sah dan menurut undang-undang (lihat ms 93F–G).

(2) Hakim yang arif terkhilaf di sisi undang-undang ketika beliau menolak tuntutan perayu dan memutuskan bahawa perayu mempunyai remedi alternatif di bawah s 413 KAJ tersebut. Seksyen 413 KAJ memberi polis kuasa untuk terus menahan sesebuah kenderaan selepas luputnya tempoh 48 jam jika tiada orang yang telah dituduh berhubung kenderaan tersebut. Peruntukan tersebut tidak memberikan sebarang hak kepada mana-mana individu, termasuk tuan punya yang tidak dipertikaikan, untuk mengusul majistret supaya memberikan beliau milikan kenderaan tersebut. Yang paling boleh dilakukan oleh individu tersebut ialah meminta pihak polis merujuk perkara tersebut kepada majistret di bawah s 413 KAJ supaya perintah yang perlu boleh dibuat. Dalam kes semasa, perayu telah dengan tepatnya melakukan sedemikian bila mana peguamcaranya telah menulis kepada pihak polis supaya merujuk perkara tersebut kepada majistret di bawah s 413 KAJ. Meskipun perayu meminta, pihak polis telah gagal untuk merujuk perkara itu kepada majistret dan terus menahan kenderaan tersebut. Satu-satunya remedi yang ada kepada perayu adalah untuk memulakan suatu tuntutan sivil untuk menuntut kenderaan tersebut sebagai kepunyaan

beliau dan ini adalah apa yang telah dilakukan oleh perayu (lihat ms 94A–D).

(3) Kuasa yang diberikan kepada Ketua Pengarah atau Pengarah di bawah s 12(1) Akta Pengangkutan Jalan 1987 ('APJ') adalah hanya untuk memperbetulkan butir-butir di dalam buku pendaftaran berhubung kenderaan tersebut dan bukan untuk menentukan hak keempunyaan kenderaan tersebut. Meskipun terdapatnya kesangsian mengenai ketulenan butir-butir yang dinyatakan di dalam buku pendaftaran disebabkan oleh perbuatan mengacau-gangu enjin dan nombor casis, tidak terdapat sebarang permintaan oleh Ketua Pengarah atau Pengarah supaya buku tersebut dikemukakan supaya ia boleh dipinda atau diperbetulkan (lihat p 94E–F).

(4) Tiada keterangan telah dikemukakan oleh responden bahawa perayu telah membantu atau menolong ketiga-tiga tuan punya terdahulu kenderaan tersebut dalam pendaftaran nama mereka. Oleh itu, perayu adalah sesungguhnya merupakan pembeli jujur bona fide (lihat ms 94I–95A).

(5) Di bawah APJ, kenderaan tersebut haruslah dibawa untuk pemeriksaan sebelum nama tuan punya baru boleh didaftarkan di dalam buku pendaftaran. Meskipun kenderaan tersebut telah dibawa untuk pemeriksaan sebanyak tiga kali oleh Jabatan Pengangkutan Jalan ('JPJ') oleh ketiga-tiga tuan punya yang lalu bagi tujuan pendaftaran, JPJ telah gagal untuk mengetahui atau menentukan bahawa enjin dan nombor casis kenderaan tersebut telah dikacau-ganggu. Oleh itu, perayu tidak boleh dipersalahkan bagi perbuatan mengacau-ganggu tersebut (lihat ms 95A–B).

(6) Keterangan perayu bahawa beliau telah mengalami ganti rugi akibat penahanan yang salah di sisi undang-undang kenderaan tersebut tidak bercanggahan. Oleh kerana perayu telah tidak menghitung ganti rugi tersebut dan telah meminta supaya ganti rugi ditaksirkan, ganti rugi tersebut akan sehubungan itu ditentukan oleh penolong kanan pendaftar Mahkamah Tinggi, Seremban (lihat ms 95E–F).]

Notes

For cases on release of seized property, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1533–1534.

Legislation referred to

Criminal Procedure Code s 413
Federal Constitution art 13(1)
Hire Purchase Act 1967 s 7(1)(a)
Police Act 1967 s 24
Road Transport Act 1987 ss 8(a), 12(1)

Appeal from: Originating Summons No 24–193 of 1995 (High Court, Seremban)

D Kalaimany (*Kalai & Partners*) for the appellant.

Mary TS Lim (*Othman Abdullah* with her) (State Legal Advisors) for the respondents.

Mokhtar Sidin JCA (delivering judgment of the court): The appellant is the registered owner of a vehicle No NAJ 1912, a Honda Accord 2.0 EX(i) ('the said vehicle'). He bought the said vehicle for RM70,000. He paid RM10,000 and for the balance of RM60,000 he took a loan from Hong Leong Finance. When the appellant paid the loan in full, he was registered as the owner of the said vehicle on 4 February 1994. On 28 April 1994 the police seized the said vehicle and kept it at the Petaling Jaya Police Station for the purpose of further investigations in order to enable the chemist to determine whether the engine and chassis numbers had been tampered to enable the police to obtain further particulars from Kah Motors Company in respect of the said vehicle. From the evidence there was no dispute that the said vehicle originated from Sabah. After it was brought into West Malaysia, it was registered at the Jabatan Pengangkutan Jalan Negeri Sembilan with the registration number NAJ 1912. Later, the Jabatan Pengangkutan Jalan Negeri Sembilan discovered that there was a syndicate falsifying and forging several applications whereby vehicles registered in Sabah were brought into West Malaysia and given new registration numbers. On discovering this, the said department lodged a police report and blacklisted all the vehicles, one of which is the said vehicle. After examination, the chemist confirmed that the chassis and the engine numbers had been tampered but could not establish the identity of the said vehicle or its origin. From the evidence, the police was unable to determine the original owner of the said vehicle or whether the said vehicle had been stolen. Despite that, the police continued to detain the said vehicle until 23 January 1995 when the said vehicle was released to the appellant under a bond.

On 6 May 1995, the appellant took out an originating summons seeking the following orders:

(1) a declaration that the appellant is the beneficial owner of the said vehicle and that the two respondents have no right to interfere with the right of the appellant under s 7(1)(a) of the Hire Purchase Act 1967 and also under art 13(1) of the Federal Constitution and the Road Transport Act 1987 ('the Act') and all the regulations thereunder. Pursuant to that order, the appellant prayed for an order that the said vehicle be registered in the name of the appellant in accordance with para (a) of s 8 of the Act;

(2) secondly, the appellant seeks a declaration that the registration of the said vehicle by the second respondent with registration number WDB 1898 with engine number MA 1A5-571289 and chassis number CB 3-7036281 made on 10 August 1992 under s 10 of the Road Transport Act 1987 is binding on the second respondent;

(3) the appellant also prayed for an order that the second respondent issued a valid road tax with the registration number NAJ 1912;

(4) the respondents pay damages for depriving the appellant of his right under art 13(1) of the Federal Constitution and the senior assistant registrar ('the SAR') be ordered to assess the damages;

In his affidavit in support of the application, the appellant deposed that on 24 January 1994 a person by the name of Dewarajoo a/l Gurusamy had shown him the said vehicle and the appellant agreed to buy the said vehicle. On 25 January 1994, the appellant took the said vehicle to a workshop at Jalan Yong Shook Lin, Petaling Jaya where the said vehicle was examined by a mechanic in the presence of the appellant where it was established that the engine number to be MA 1A5-571289 and the chassis number to be CB 3-7036281 which are the same as the one entered in the registration book of the said vehicle. On that confirmation the appellant decided to purchase the said vehicle at RM70,000. On 27 January1994, the appellant paid Dewarajoo RM10,000, upon which Dewarajoo handed the registration book and the said vehicle. In the registration card it is recorded that Dewarajoo bought the car from F & C Motor Sdn Bhd. For the balance of RM60,000 the appellant got a loan from Hong Leong Finance secured by a Hire Purchase Agreement dated 2 February 1994. The appellant's name was registered as the owner of the said vehicle in the registration book. Before releasing the loan Hong Leong Finance made a search with the Road Transport Department, Seremban, Negeri Sembilan to confirm the details as stated in the registration book. The appellant had repaid the loan to Hong Leong Finance. On 28 April 1994, at about 11pm a party of police officers went to the appellant's house at No 10 Jalan 5/33, Petaling Jaya, Selangor and seized the said vehicle. The appellant was told by the police that the said vehicle was suspected to be a stolen vehicle. The appellant informed the police that he bought the said vehicle from Dewarajoo. He then led the police party to Dewarajoo's house where the said Dewarajoo was arrested. At the Petaling Jaya Police Headquarters, the appellant was again told that the said vehicle was suspected to be a stolen vehicle.

On 4 October 1994, the appellant's solicitors wrote to the police requesting the police to release the said vehicle to the appellant under s 413 of the Criminal Procedure Code ('the CPC') or s 24 of the Police Act 1967 ('the Act') on the ground that he was a bona fide purchaser for good value. The first respondent refused to release the said vehicle. It was stated that as a result of the seizure and the detention of the said vehicle, the appellant suffered damages. The appellant gave evidence that the nature of his employment required him to travel and because the said vehicle had been detained, he was deprived of the use of the said vehicle. In addition, he had to pay the monthly instalment of RM1,375 to Hong Leong Finance for the loan. The appellant gave evidence that he made a search at the Road Transport Department, Wilayah Persekutuan where it was confirmed that the engine and the chassis numbers were the same as the one written in the registration book handed to him. Appellant further stated that on his own

he had done everything possible to ensure that the said vehicle was not a stolen property. He went on to say that the second respondent was to be blamed for issuing the registration book with the details and particulars as stated in the registration book. The Road Transport Department, Sabah and Negeri Sembilan were equally to be blamed for not carrying a proper inspection of the said vehicle and not being able to discover that the engine and chassis numbers had been tampered.

In reply, the respondents stated that the appellant is not entitled under the law to apply to be the beneficial owner of the said vehicle. The reasons being:

(a) On 20 September 1993, F & C Motor Sdn Bhd applied to have the registration number of the said vehicle be changed from SS 9554 C to the present registration number.

(b) The second respondent found that the application and the documents supporting the application were in order and duly registered the said vehicle with the present registration number NAJ 1912.

(c) In that application the company executed an indemnity letter to indemnify the second respondent from any liability in respect of that application. Indemnities were also given by the individual owners every time there was a change in name of the registered owner appearing in the registration book.

(d) The said company also made a statutory declaration that they were the legal owner of the said vehicle.

(e) After the registration, the second respondent discovered there was a syndicate of falsifying documents involving vehicles registered in Sabah.

(f) The second respondent then lodged a police report and blacklisted all the vehicles including the said vehicle.

(g) The first respondent admitted confiscating and detaining the said vehicle for investigation. As a result of that investigation the police found that the engine and chassis numbers had been tampered.

It was contended by the respondents that since the appellant is not the lawful owner of the said vehicle, the said vehicle cannot be released to the appellant. It was further contended by the respondents that s 413 of the CPC and s 24 of the Act provide for the release of the said vehicle to the lawful owner.

The learned judge who heard the application dismissed the appellant's application. In his judgment the learned judge said:

> Akibat dari pemalsuan nombor enjin motokar itu maka identiti sebenar kereta itu tidak diketahui. Siapa pemilik asalnya atau sama ada motokar itu telah digelapkan atau dicuri juga tidak diketahui sehingga pihak polis menamatkan siasatannya nanti. Mahkamah enggan membuat sebarang perisytiharan mengenai motokar itu apabila terdapat alternative remedy seperti yang diperuntukkan di bawah s 413 Kanun Acara Jenayah di mana seorang majistret boleh membuat enquirynya dan melupuskan motokar itu kepada

plaintif dengan terma tertentu atau di bawah s 12(1) Akta Pengangkutan Jalan di mana Ketua Pengarah atau Pengarah boleh memeriksa motokar itu dan menentusahkan maklumat sebenar mengenainya dan membuat pembetulan kepada Kad Pendaftaran kereta itu. Plaintif telah membeli kereta itu dari pemilik terdahulu dan plaintif berhak mendapatkan good title tetapi plaintif mendapat pemilikan/motokar yang cacat. Oleh hal yang demikian plaintif mempunyai remedi terhadap pemilik terdahulu tapi plaintif belum mengambil tindakan sewajarnya.

Dalam hal keadaan di atas mahkamah ini enggan memberi perintah sebagaimana dipohon kerana siasatan polis masih berjalan dan ada kemungkinan akan timbul tuntutan yang berlawanan antara plaintif dan pihak lain yang ada kepentingan terhadap motokar itu. Mahkamah menolak permohonan plaintif dengan kos.

Being dissatisfied with that decision the appellant appealed to this court. From the record, the ground of judgment was given on 25 November 1996 and this appeal came up before us on 21 September 2000, almost some four years later. We take note of this because if there is any police investigation it should be completed by the time this matter came up for hearing before us.

The learned counsel for the appellant contended that the appellant had been deprived of his property not in accordance with the law. It was submitted that a motor vehicle could only be seized and detained by the police pursuant to s 24(4) of the Act or s 413 of the CPC. Section 24(4) of the Act provides:

Any police officer may cause any vehicle or vessel, which he has reasonable grounds to suspect has been used in the commission of an offence against any law in force or to be evidence of the commission of any such offence, to be moved to the nearest Police District headquarters or other convenient place, and the Officer in Charge of such Police District may thereupon cause such vehicle or vessel there to be detained, pending enquiries, for a period not exceeding 48 hours, or if, within that period, there are commenced proceedings in respect of any such offence in which the vehicle or vessel is liable to forfeiture under any law or may properly be produced in evidence, until the final determination of those proceedings:

Provided that the officer in charge of such Police District may, notwithstanding the provisions of this subsection, direct the release of any such vehicle or vessel where he is satisfied that the owner or person in charge of such vehicle or vessel will duly produce such vehicle or vessel before the court when required, and for such purpose may require such owner or person to execute such bond or deposit such security as he may deem reasonable.

The appellant contended that under that provision police could seize and detain a vehicle for the purpose of investigation for a period not exceeding 48 hours. Anyway, that period could be extended indefinitely if there is a charge being preferred against any person in respect of the vehicle. When there is no charge being preferred then the said vehicle has to be released after 48 hours unless it is referred to the magistrate under s 413 of the CPC. In the present appeal the said vehicle was detained for more than 48 hours and it was not referred to the magistrate under s 413 of the CPC. Section 413 of the CPC provides as follows:

Procedure by police on seizure of property

(1) The seizure or finding by any police officer of property taken under s 20 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known the magistrate may order the property to be delivered to him on such conditions, if any, as the magistrate thinks fit, and shall in such case cause a notice to be served on such person informing him of the terms of the order and requiring him to take delivery of the property within such period from the date of the service of the notice (not being less than 48 hours) as the magistrate may in such notice prescribe.

(3) If such person is unknown the magistrate may direct that the property be detained in police custody, and the Chief Police Officer shall in such case issue a public notification specifying the articles of which the property consists and requiring any person who has any claim within six months from the date of such public notification.

Provided that, where it is shown to the satisfaction of the magistrate that such property is of no appreciable value, or that its value is so small as, in the opinion of the magistrate, to render impracticable the sale, as hereinafter provided, of such property, or as to make its detention in police custody unreasonable in view of the expense or inconvenience that would thereby be involved, the magistrate may order such property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the notification above referred to as he may determine or forthwith as he thinks fit.

(4) ...

We agree with the contention of the learned counsel for the appellant that the said vehicle had been detained by the police after more than 48 hours after it was seized. After the 48 hours had expired the police did nothing to legalize the detention under s 413 of the CPC because they did not produce the said vehicle before the magistrate for the magistrate to make the necessary order. As such it is clear to us that the continued detention of the said vehicle after the 48 hours under the Act was illegal.

In our view the learned judge had erred when he found that the continued detention to be valid and legal and in his judgment he said:

> … Mahkamah enggan membuat sebarang perisytiharan mengenai motokar itu apabila terdapat alternative remedy seperti yang diperuntukkan di bawah s 413 Kanun Acara Jenayah di mana seorang majistret boleh membuat enquirynya dan meluluskan motokar itu kepada plaintif dengan terma tertentu atau di bawah s 12(1) Akta Pengangkutan Jalan di mana Ketua Pengarah atau pengarah boleh memeriksa motokar itu dan menentusahkan maklumat sebenar mengenainya dan membuat pembetulan kepada Kad Pendaftaran kereta itu …

With the greatest respect to his Lordship, what was stated by him is if the said vehicle is referred to the magistrate. In the present appeal it is clear to us s 413 of the CPC is not an alternative remedy available to the appellant. It is a provision empowering the police to continue detaining a vehicle after the 48th hour if no person has been charged in respect of that vehicle. That section does not give any right to any individual including the undisputed owner to move the magistrate to grant him the possession of the said vehicle. At the most he could only request the police to set s 413 of the CPC in motion to refer the said vehicle to a magistrate for the necessary to be made. In the present appeal the appellant did precisely that when his solicitors wrote a letter dated 3 October 1994 requesting the police to refer the matter to the magistrate under s 413 of the CPC. Together with that letter were copies of the relevant documents showing that the appellant was an innocent bona fide purchaser of the said vehicle. Despite that the police failed to refer the matter to the magistrate and continued to detain the said vehicle. It is obvious to us that the learned judge erred when he dismissed the appellant's claim and said what he had said in the passage cited above. It is obvious to us that there was no remedy available to him under s 413 of the CPC when the police refused to refer the matter to the magistrate. The only remedy to him is to prefer a civil claim, claiming the said vehicle to be his and this is precisely what he had done.

In respect of s 12(1) of the Road Transport Act cited by the learned judge in the passage above, it is clear to us that the power given to the Director General or a Director therein is only to correct the particulars in the registration book pertaining to the said vehicle and not the determination of the ownership of the said vehicle. In the present appeal though there was suspicion on the genuineness of the particulars stated in the registration book because of the tampering of the engine and chassis numbers, there was no request made by the Director General or a Director to the appellant for the registration book to be produced whereby the particulars in that book could be corrected or amended. As it is according to the registration book, the appellant is the registered owner of the said vehicle and remains as such until the registration book is amended or corrected. From the evidence there is no other claimant to the said vehicle and indeed the respondents conceded that there was no report of the said vehicle being stolen and that the police was unable to determine the original owner of the said vehicle even though they have established the original engine and chassis numbers.

From the evidence, it is clear to us that when the said vehicle was brought into West Malaysia from Sabah whereby a new registration number was given, there was a dispute that the engine and chassis numbers had been tampered with. As we have stated earlier, the first registered owner in West Malaysia appearing in the registration book is F & C Motor Sdn Bhd. The second owner appearing therein is Dewarajoo s/o Gurusamy and the third name is Pritam Singh a/l Jag Singh. The fourth and final name appearing therein is the name of the appellant. No evidence had been adduced by the respondent that the appellant had in any way assisted or aided the first three registered owners in the

registration of their names. In our view, the appellant is truly an innocent bona fide purchaser.

Another significant factor to be taken into consideration is that under the Act the said vehicle had to be brought in for inspection before the name of the new owner could be registered in the registration book. As such the said vehicle had been brought in three times to the Road Transport Department for inspection and yet that department failed to discover or determine that the engine and chassis numbers had been tampered with.

For the above reasons we are of the view that the appellant could not be blamed with the tempering. When the said vehicle was detained beyond the period permissible under the law, the detention is illegal and the appellant has every right to complain about it. The police have every opportunity to extend the detention of the said vehicle legally viz under s 413 of the CPC but they failed to make use of that opportunity and they have face the consequences. The appellant in order to protect his rights have instituted the present action and he has every right to do so because the detention beyond the 48 hours as provided for by the Act is totally unlawful.

The appellant have given evidence that he had suffered damages as a result of the unlawful detention of the said vehicle. He had requested for the said vehicle to be released to him on bond because the nature of his works required him to travel to various places in Malaysia. That request was not entertained until 23 January 1995 when the said vehicle was released to the appellant on bond. There was no evidence to contradict this evidence and the evidence that the nature of work of the appellant required him to travel extensively.

For the above reasons we find that the appellant have suffered damages due to the unlawful detention of the said vehicle. For that we will allow the appellant's claim for damages. Since the appellant have not quantified the damages and also on his own request that the damages be assessed, we will allow the damages to be assessed by the SAR of the High Court, Seremban.

For the above reasons we allow the appeal with costs here and below. We make the following order in respect of this appeal:

(a) a declaration that the appellant is the beneficial owner of vehicle number NAJ 1912;

(b) a declaration that the registration book of the said vehicle be recorded with the engine number as MA 1A5-571289 and the chassis number as CB 3-7036281;

(c) an order that the second respondent do issue the necessary road tax in respect of the said vehicle after the appellant had made the necessary payment in respect of the road tax and the insurance of the said vehicle taken;

(d) that the detention of the said vehicle by the police after the 48 hours was not in accordance with the law and therefore the appellant is entitled to claim damages against the first respondent which is to be

assessed by the SAR. Since the said vehicle was released to the appellant on 23 January 1995 the damages to be assessed is the period between 30 April 1994 to 23 January 1995. The interest for the assessed damages will attract interest at 8%pa.

Appeal allowed.

Reported by Lim Lee Na